

# **EXHIBIT A**

**FILED**  
MADERA SUPERIOR COURT

SEP 03 2020

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CLERK

DEPUTY

*Attorneys for Plaintiff Silvia Clerisa Fraire*

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF MADERA – CIVIL DIVISION

SILVIA CLERISA FRAIRE, aka Silvia Clerisa  
Rodriguez, an individual;

Plaintiff,

vs.

ABF FREIGHT SYSTEM, INC., a corporation;  
ARCBEST CORPORATION, a corporation;  
JOSEPH HERRERO, an individual; and DOES 1  
through 100, Inclusive,

Defendants.

CASE NO. **MCV084048**

**COMPLAINT FOR DAMAGES;  
DEMAND FOR JURY TRIAL**

1. Negligence
2. Negligence Per Se

BY FAX

Plaintiff SILVIA CLERISA FRAIRE ("Plaintiff") alleges as follows:

**THE PARTIES**

1. Plaintiff SILVIA CLERISA FRAIRE, aka Silvia Clerisa Rodriguez, is an individual currently residing in Fresno, California.

2. Defendant ABF FREIGHT SYSTEM, INC. is a corporation existing under the laws of the State of Arkansas. Defendant ABF FREIGHT SYSTEM, INC. is a wholly owned subsidiary of Defendant ARCBEST CORPORATION.

3. Defendant ARCBEST CORPORATION is a corporation existing under the laws of the State of Arkansas.

4. Defendant JOSEPH HERRERO is an individual currently residing in Kingman, Arizona.

5. Plaintiff is unaware of the names and capacities of Defendants Does 1 through 100 inclusive, and therefore sues them by fictitious names. Plaintiff will amend this Complaint to show the true names and capacities of these Defendants once they are ascertained. Plaintiff is informed, believes and thereon alleges that each of these Defendants are responsible in some manner for the wrongful acts alleged in this Complaint and proximately caused Plaintiff's damages.

**VENUE**

6. At all times herein mentioned, the subject collision occurred on southbound SR-99 approximately 0.2 miles north of Avenue 18 1/2 in an unincorporated area of the County of Madera, California.

## GENERAL ALLEGATIONS

7. Plaintiff incorporates by reference the paragraphs above, as though fully set forth herein.

8. At all times herein mentioned, "Defendants" refers to ABF FREIGHT SYSTEM, INC., ARCBEST CORPORATION, JOSEPH HERRERO, and DOES 1 through 100.

9. At all times herein mentioned, "Employer Defendants" refers to ABF FREIGHT SYSTEM, INC., ARCBEST CORPORATION, JOSEPH HERRERO, and DOES 1 through 15.

10. At all times herein mentioned, Defendants operated a certain vehicle owned by Defendants.

11. At all times herein mentioned Defendants entrusted a certain vehicle owned by Defendants to Defendants.

12. At all times herein mentioned Defendants owed Plaintiff a duty of care and were required to conform their conduct to that of a reasonably prudent person.

13. At all times herein mentioned, Defendants operated their vehicle as an agent for and in the course and scope of their employment with Defendants.

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1       14. At all times herein mentioned, Defendants actions caused injuries to Plaintiff as  
2 set forth herein while in the course and scope of their employment with, and while acting as an  
3 agent for Defendants. Therefore, Defendants are all fully responsible for Defendants conduct  
4 through the doctrine of *respondeat superior*.

5       15. At all times herein mentioned, Defendant JOSEPH HERRERO operated a certain  
6 vehicle owned by Employer Defendants.

7       16. At all times herein mentioned Employer Defendants entrusted a certain vehicle  
8 owned by Employer Defendants to Defendant JOSEPH HERRERO.

9       17. At all times herein mentioned, Defendant JOSEPH HERRERO operated a certain  
10 vehicle as an agent for, and in the course and scope of his employment with Employer  
11 Defendants.

12       18. At all times herein mentioned, Defendant JOSEPH HERRERO's actions caused  
13 injuries to Plaintiff as set forth herein while in the course and scope of his employment with, and  
14 while acting as an agent for Employer Defendants. Therefore, Employer Defendants are all fully  
15 responsible for Defendant JOSEPH HERRERO's conduct through the doctrine of *respondeat*  
16 *superior*.

17                   **FIRST CAUSE OF ACTION**

18                   (NEGLIGENCE)

19       19. Plaintiff incorporates by reference the paragraphs above, as though fully set forth  
20 herein.

21       20. On or about June 22, 2019, Defendants operated Defendants' vehicle in such a  
22 negligent manner as to cause Defendants' vehicle to violently strike a vehicle operated by  
23 Plaintiff ("Plaintiff's vehicle"), causing serious injuries to Plaintiff.

24       21. At said times and places, Defendants negligently, carelessly, and without due care  
25 or regard for the life, safety, and rights of Plaintiff, did so own, entrust, maintain, operate, and/or  
26 failed to maintain the vehicle driven by Defendants in a safe manner, causing Defendants'  
27 vehicle to violently strike Plaintiff's vehicle, causing serious injuries to Plaintiff.

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1           22. As a proximate result of the negligence of Defendants, and each of them, Plaintiff  
2 was hurt and injured in her health, strength, and activity, sustaining injury to her body and shock  
3 and injury to her nervous system and person, all of which said injuries have caused, and continue  
4 to cause Plaintiff great mental, physical and emotional distress and pain and suffering. Plaintiff  
5 is informed, believes and thereon alleges, that said injuries will result in some permanent  
6 disability to said Plaintiff, all to her general damages in an amount to be proven at trial.

7           23. As a proximate result of the negligence of the Defendants, and each of them,  
8 Plaintiff has incurred and will continue to incur medical and related expenses, in an amount that  
9 is unknown at this time but which will be proven at the time of trial.

10           24. As a proximate result of the negligence of the Defendants, and each of them,  
11 Plaintiff has sustained economic damages and loss of earnings, and will continue to incur  
12 economic damages and loss of earnings in an amount that is unknown at this time but which will  
13 be proven at the time of trial.

14           25. As a further proximate result of the negligence of the Defendants, and each of  
15 them, Plaintiff has suffered and will continue to suffer, a loss of earning capacity in an amount  
16 presently unknown but which will be proven at the time of trial.

17           26. As a further proximate result of the negligence of the Defendants, and each of  
18 them, Plaintiff has suffered and will continue to suffer general damages in an amount presently  
19 unknown, but which will be proven at the time of trial.

20           27. Plaintiff is informed, believes and thereon alleges, that in the future as a further  
21 direct, proximate and legal result of the negligence, carelessness, and unlawfulness of  
22 Defendants, Plaintiff will require the services of physicians, surgeons, therapists, nurses,  
23 hospitals and other medical and chiropractic professional services to treat and care for him, and  
24 the reasonable amount of said services and liability will conform to proof at the time of trial.

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1        28. Plaintiff is informed, believes and thereon alleges, that as a further direct,  
2 proximate and legal result of the negligence, carelessness, and unlawfulness of Defendants,  
3 Plaintiff was required to, and did, employ physicians, nurses, hospitals, therapists, and other  
4 medical and chiropractic professional services to treat and care for her. As a result, Plaintiff  
5 incurred and continues to incur expenses for medical and chiropractic treatment and care,  
6 medicines, and incidental care.

7        29. As a proximate result of the negligence of the Defendants, and each of them,  
8 Plaintiff has sustained economic damages and loss of earnings, and will continue to incur  
9 economic damages and loss of earnings in an amount that is unknown at this time but which will  
10 be proven at the time of trial.

11       30. As a further proximate result of the negligence of the Defendants, and each of  
12 them, Plaintiff has suffered and will continue to suffer, a loss of earning capacity in an amount  
13 presently unknown but which will be proven at the time of trial.

14       31. As a further proximate result of the negligence of the Defendants, Plaintiff's  
15 property was damaged, which caused Plaintiff to be without the use and enjoyment thereof.  
16 Plaintiff's property damages are an amount presently unknown, but which will be proven at the  
17 time of trial.

18                                    **SECOND CAUSE OF ACTION**

19                                    (NEGLIGENCE PER SE as to Defendant JOSEPH HERRERO)

20       32. Plaintiff incorporates by reference the paragraphs above, as though fully set forth  
21 herein.

22       33. Plaintiff is further informed, believes and thereon alleges, that on or about June  
23 22, 2019, Defendant JOSEPH HERRERO:

- 24           a. Violated Vehicle Code § 22350, in that Defendant JOSEPH HERRERO operated  
25 Defendants' vehicle at a speed unsafe for the conditions (speeding); and  
26           b. Failed to use reasonable safety that a reasonable or prudent driver would have  
27 which endangered the safety of persons and property; and

28       ///

1 c. Failed to otherwise control, operate and drive Defendant's vehicle so as to avoid  
2 causing said collisions; and

3 d. Caused an impact between Defendants' vehicle and Plaintiff's vehicle.

4 34. California Vehicle Code § 22350 was intended and designed to prevent the  
5 collision, and injuries that Plaintiff suffered as alleged herein.

6 35. Plaintiff was a member of the class of persons for whose protection California  
7 Vehicle Code § 22350 was adopted.

8 36. Plaintiff is further informed, believes, and thereon alleges, that on or about June  
9 22, 2019, Defendant JOSEPH HERRERO:

10 a. Violated Vehicle Code § 22107(a) in that Defendant JOSEPH HERRERO, in  
11 operating Defendants' vehicle, moved Defendants' vehicle from a direct course  
12 within one (1) lane of travel, causing Defendants' vehicle to enter Plaintiff's lane  
13 of travel and invade Plaintiff's right-of-way; and

14 b. Failed to use reasonable safety that a reasonable or prudent driver would have  
15 which endangered the safety of persons and property; and

16 c. Failed to otherwise control, operate and drive Defendant's vehicle so as to avoid  
17 causing said collision; and

18 d. Caused an impact between Defendants' vehicle and Plaintiff's vehicle.

19 37. California Vehicle Code § 22107(a) was intended and designed to prevent the  
20 collision, and injuries that Plaintiff suffered as alleged herein.

21 38. Plaintiff was a member of the class of persons for whose protection California  
22 Vehicle Code § 22107(a) was adopted.

23 39. Plaintiff is further informed, believes, and thereon alleges, that on or about June  
24 22, 2019, Defendant JOSEPH HERRERO:

25 a. Violated Vehicle Code § 21658(a) in that Defendant JOSEPH HERRERO, in  
26 operating Defendants' vehicle, attempted to change lanes and failed to maintain  
27 Defendants' vehicle in a single lane of travel, causing Defendants' vehicle to  
28 enter Plaintiff's lane of travel and invade Plaintiff's right-of-way; and

- b. Failed to use reasonable safety that a reasonable or prudent driver would have which endangered the safety of persons and property; and
- c. Failed to otherwise control, operate and drive Defendant's vehicle so as to avoid causing said collision; and
- d. Caused an impact between Defendants' vehicle and Plaintiff's vehicle.

40. California Vehicle Code § 21658(a) was intended and designed to prevent the collision, and injuries that Plaintiff suffered as alleged herein.

41. Plaintiff was a member of the class of persons for whose protection California Vehicle Code § 21658(a) was adopted.

42. Plaintiff is informed, believes and thereon alleges that as a direct, proximate and legal result of the negligence, carelessness, and unlawfulness of Defendant JOSEPH HERRERO, Plaintiff was injured in her health, strength and activity, in various parts of her person. Plaintiff also sustained shock and injury to her nervous system and person, all of which injuries have caused and continue to cause Plaintiff severe mental, physical and nervous injury, anxiety, and pain and suffering. Plaintiff is informed, believes, and thereon alleges, that these injuries caused by Defendant JOSEPH HERRERO will result in some permanent disability to Plaintiff, all to her general damages, in an amount to be proven at trial.

43. Plaintiff is informed, believes and thereon alleges, that as a further direct, proximate and legal result of the negligence, carelessness, and unlawfulness of Defendant JOSEPH HERRERO, Plaintiff was required to, and did, employ physicians, nurses, hospitals, therapists, and other medical and chiropractic professional services to treat and care for her. As a result, Plaintiff incurred and continues to incur expenses for medical and chiropractic treatment and care, medicines, and incidental care.

44. As a proximate result of the negligence of the Defendant JOSEPH HERRERO, Plaintiff has sustained economic damages and loss of earnings, and will continue to incur economic damages and loss of earnings in an amount that is unknown at this time but which will be proven at the time of trial.

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45. As a further proximate result of the negligence of the Defendant JOSEPH HERRERO, Plaintiff has suffered and will continue to suffer, a loss of earning capacity in an amount presently unknown but which will be proven at the time of trial.

46. Plaintiff is informed, believes and thereon alleges, that in the future as a further direct, proximate and legal result of the negligence, carelessness, and unlawfulness of Defendant JOSEPH HERRERO, Plaintiff will require the services of physicians, surgeons, therapists, nurses, hospitals and other medical and chiropractic professional services to treat and care for her, and the reasonable amount of said services and liability will conform to proof at the time of trial.

47. As a further proximate result of the negligence of the Defendants, Plaintiff's property was damaged, which caused Plaintiff to be without the use and enjoyment thereof. Plaintiff's property damages are an amount presently unknown, but which will be proven at the time of trial.

## **PRAYER FOR RELIEF**

**WHEREFORE, Plaintiff prays for judgment against the Defendants, and each of them, as follows:**

1. General damages to Plaintiff, according to proof;
2. Medical and related expenses of Plaintiff, according to proof;
3. Loss of earnings of Plaintiff, according to proof;
4. Loss of earning capacity of Plaintiff, according to proof;
5. Loss of use and enjoyment and damages to personal property, according to proof;
6. Costs of suit herein;
7. Prejudgment interest;
8. Such other further relief as the Court deems just and proper.

**JURY DEMAND**

**Plaintiff demands a trial by jury on all claims so triable.**

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III

1 DATED: September 2, 2020

The May Firm, Inc.

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4 Garrett May  
5 Attorney for Plaintiff  
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